

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.S-190 of 2019

Present

Mr. Justice Adnan-ul-Karim Memon.

Mst. Aqsa Mastoi ----- Petitioner

Vs.

The Province of Sindh & others ----- Respondents

Date of Decision: 22.03.2019

Mr. R. Masood Ahmed Qazi, Advocate alongwith petitioner.

Mr. Allah Bachayo Soomro, Additional Prosecutor General, Sindh, alongwith Inspector Muhammad Iqbal S.H.O P.S B-Section Nawabshah and ASI Nisar Ahmed Abro, P.S. Bin Qasim Karachi, Malir.

Mr. Faiz Muhammad Shar, Advocate files Vakalatnama on behalf of respondent No.6, taken on record.

Respondent No.6 is present alongwith minors Zainab and Abdullah.

ORDER

ADNAN-UL-KARIM MEMON, J. - The petitioner has filed the captioned petition with following prayer:

- (a) That this Honourable Court may kindly be pleased to direct the respondent No.6 to release said minor detenues namely (1) Baby Zainab, aged about 04 years and (2) Abdullah, aged about 1-1/2 years, who was detained since July, 2018 and they are kept by the respondent No.6 in his WRONGFUL CONFINEMENT till submission of this petitioner.
- (b) To direct the respondent No.3 & 4 to produce the detenues namely (1) Baby Zainab, aged about 04 years and (2) Abdullah, aged about 1-1/2 years, before this Honourable Court.
- (c) To take action against the respondent No.6 as per law for his illegal and unlawful act.
- (d) To direct the respondents No. 1 to 5 to provide legal protection of life, honour, prestige and property of the petitioner and detenues from the cruel clutches of the respondent No.6.”

2. Mr. R. Masood Ahmed Qazi, learned counsel for the petitioner has argued that petitioner’s minors were taken away by respondent-father forcibly and in

this regard she has filed the instant petition for their recovery and in compliance of the order passed by this Court, notice was served upon the Respondents including Station House Officer P.S B-Section Nawabshah has filed para-wise comments and produced the minors before this Court.

3. I have heard learned counsel for the parties, gone through the record and considered their submissions.

4. The pivotal question involved in the present petition is whether the custody of minors can be given to either party or the learned Guardian Court has jurisdiction to deal with the issue of minors and their custody.

5. Record reflects that Respondent No.6 is real father of minors namely Zainab and Abdullah and the right of the parties to claim the custody of minors is yet to be adjudicated by the learned Family Court on merits.

6. I am cognizant of the fact that welfare of the minors is a dormant factor while determining question of custody. I am of the view that rights of the parties are yet to be adjudicated by the learned family Court if the concerned court is approached by the parties.

7. In view of the above facts and circumstances of the case, the purpose of filling this petition is achieved; the minors are no more in illegal custody as they are with natural guardian/father.

6. I have noted that the petitioner is real mother of children who has sought custody of minors. Indeed the Guardian Court is final arbitrator for adjudicating the question of custody of children as such parents cannot be deprived, therefore, the learned Guardian Court has to see the welfare of the minors and their custody, if approached. Therefore, for the reasons alluded herein above allowing the parties to move before the learned family/ Guardian Court for final adjudication of the matter within a period of one week. In the meanwhile the respondent-father shall not remove the custody of minors namely Zainab and Abdullah from the jurisdiction of this Court.

This petition stands disposed of in the above terms along with listed applications, if any.

JUDGE